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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,160	03/10/2006	Olaf Kersten	1179 033	4000
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Hiscock & Barclay, LLP One Park Place 300 South State Street Syracuse, NY 13202-2078			EXAMINER NICHOLS IL ROBERT K	
			ART UNIT	PAPER NUMBER
			3754	
			MAIL DATE	DELIVERY MODE
			06/19/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/524,160

**Applicant(s)**

KERSTEN, OLAF

**Examiner**

ROBERT K. NICHOLS II

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/02)  
Paper No(s)/Mail Date 03/19/2009
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This office action is responsive to the amendment filed on 04/15/2009. As directed by the amendment: claims 21, 26 and 36 have been amended, claims 1-20 were previously cancelled, and new claim 42 has been added. Thus, claims 21-42 are presently pending in this application.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 42 recites the limitation "the elastic material" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 21-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geier et al. (US 5,630,530) in view of Jacobson et al. (US 4,482,170).**

Regarding claims 21, 25, 29, 31, 36, 37, 38 and 41, Geier discloses a discharge valve including a sack or bag 24 of flexible film material, wherein the sack is bonded in a border area in two superimposed layers. Geier further discloses a receptacle body 36/38 being bonded in the border area 34 between the two layers of the film material (see figure 2, column 5, lines 27-30 and abstract). Geier discloses the receptacle body 36/38 being made from a material permeable to organic media (i.e. surface or sleeve 36 being of polyethylene, polypropylene and the like) and the sack being made from a material permeable to organic media (i.e. polyethylene or polypropylene); wherein the receptacle body material can be bonded to the sack material (see column 3, lines 18-25, column 5, lines 27-30, column 4, lines 12-20 and column 2, lines 29-31).

Furthermore, Geier discloses the sack being able to be placed into a container 22 through an opening 23 which is closable by a valve cap or lid 25 whereby the valve cap 25 holds a valve stem 14 with a valve needle or discharge nozzle 18 which is axially movable out of a closed position against the force of an elastic element or coil spring 20 (column 3, lines 53-65 and column 4, lines 25-31).

Geier further discloses a valve stem or valve body 14 which is made of a synthetic material that is essentially impermeable to organic media and includes a tubular section, the receptacle body 36/38 having a tubular appendage 44 and the valve stem 14 having a receptacle as a counterpart, in order to connect the receptacle body

and valve stem with each other using a clamp connection (see figure 2, column 2, lines 26-34 and column 4, lines 52-60).

Geier additionally discloses a gasket or sealing ring 32 having a shape of a flat ring arranged between the receptacle body and valve stem, wherein the gasket 32 at least partially covers the frontal or bearing surface 40 of the receptacle body 36/38 on its side facing the valve stem 14, wherein the diffusion of organic media is prevented by the gasket and the valve stem (see figure 2 and column 4 lines 61-67). The examiner notes Geier discloses the impermeable valve stem is provided with additional sealing means 32 which seals the bag off completely from the interior of the container. Geier further discloses an exchange of individual materials, in particular organic media between the interior of the bag and its surroundings is effectively prevented (column 1, lines 58-61).

Regarding claim 22, Geier discloses the appendage 44 having a tubular section with a widened end section (see figure 2 and column 4, lines 52-60).

Regarding claim 23, Geier discloses the end section narrows in a truncated shape towards its free end (see figure 2).

Regarding claim 24, Geier discloses the receptacle of the valve stem 14 to have a step in its opening section that reduces the diameter (see figure 2 and column 4, lines 52-60).

Regarding claim 27, Geier discloses a circumferential tapered ring on the side of the receptacle body 36/38 facing the valve stem 14 (see figure 2 and column 4, lines 52-60).

Regarding claim 28, Geier discloses the receptacle body 36/38 to have a tapered-oval cross section 44, whose tips point to the bonding seam 46 of the sack (see figure 2 and column 4, lines 12-20).

Regarding claim 32, Geier discloses the film material is coated on its bonded side with at least one of PE, PET and PP (see column 4, lines 12-17, column 5, lines 27-30 and abstract).

Regarding claim 33, Geier discloses the receptacle body 36/38 surface to be made out of one of PBT, PE and PP (column 3, lines 18-25).

Regarding claim 34, Geier discloses the receptacle body 36/38 and the bonded side of the film material to be made out of one of the following material combinations: PBT and PET, PE and PE, and PP and PP (column 3, lines 18-25 and column 4, lines 12-20).

Regarding claim 35, Geier discloses the valve housing to be made out of POM (column 3, lines 18-25).

Regarding claims 39 and 40, and with further regards to claims 21, 28, 32, 34 and 36, the patentability of a product does not depend on its method of production. If the product in the product-by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Regarding claims 26 and 42, and with further regards to claims 21 and 36, Geier discloses all the elements of the claimed invention but is silent to the material of the gasket.

Jacobson teaches the use of a resilient gasket or seal 36 being of a BUNA synthetic rubber in order to provide an impermeable seal between two members (see column 3, lines 28-30 and 61-63).

Thus, one of ordinary skill in the art would recognize that the known option of forming the gasket of flexible material being BUNA involves only routine skill in the art, for the predictable result of providing an impermeable seal.

Notwithstanding, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the gasket of BUNA, since it has been held to be within the general skill of a worker in the art to select a known

material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 30, the combination of Geier and Jacobson discloses all the elements of the claimed invention except the appendage being formed on the valve stem and the receptacle being provided with the receptacle body.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the valve stem with the appendage and the receptacle body with the receptacle, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167

### ***Response to Arguments***

Applicant's arguments submitted under "Remarks" in the response filed on 04/15/2009 have been fully considered but are moot in view of the new rejections made in this action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. K. N./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754